IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.13490 of 1997

M/s.Gangetic Commercial (India)
Rep. by its Proprietrix Mrs.Maya Devi Gupta,
No.K-20, Industrial Estate,
Ambattur, Chennai-600 058. .. Petitioner

vs.

1. The Tamil Nadu Electricity Board
by its Chairman,
800, Anna Salai, Chennai-600 002.

2. The Superintending Engineer,
Chennai Electricity Distribution Circle (West),
Anna Nagar, Chennai-600 040.

3. The Junior Engineer,
Tamilnadu Electricity Board,
Industrial Estate South,
MEDC/WEST,
Ambattur, Chennai-600 058. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, calling for the records relating to the Demand dated Nil, July 1997 made in Letter No.JE/IE/S/ABT/35:02:843/D.381/97 on the file of the third respondent and to quash the same as illegal.

For petitioner : Mr.G.K.Selvarajan

For respondents : Mr.G.Vasudevan

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ORDER

The writ petition has been filed challenging the order of the third respondent dated - July 1997.

2. The case of the petitioner is that the petitioner is a proprietary firm owned by Maya Devi Gupta. Originally, it was a partnership firm of the year 1977 and the two partners were Pradeep Gupta and Maya Devi Gupta. In 1983, the business was closed and E.B. connection disconnected. In 1992, the machineries were sold and on 22.3.1993, the partnership was dissolved. The

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industrial shed was leased out to M/s.Adarsh Alloys and Castings (Madras) Pvt. Ltd., Chennai, by a deed of lease dated 12.2.1993. The petitioner's industrial shed was allotted Service Connection No.35-02-843. The electricity consumption dues payable by the industrial unit were being paid regularly and there was no arrears. It is the case of the petitioner that there was another company, by name M/s.Gangetic Steel Rolling Mills Pvt. Ltd., Arapakkam Village, North Arcot District and the said Pradeep Gupta was one of the Directors of the Company. In respect of the said private limited company, certain amounts were due and payable towards electricity charges. The third respondent suddenly included the amounts--Rs.73,811/- and Rs.42,810/-, totalling to Rs.1,16,621/- in the Bill payable for the month of February 1997. Thereafter, the petitioner made a representation stating that the petitioner is not liable for the said amounts and based on the representation, the same was cancelled on 1.3.1997. Subsequently, in the month of July 1997, a sum of Rs.1,16,247/- was once again added to the Bill. This was followed by the impugned order passed by the third respondent which is to the following effect:

> "It is requested to pay a sum of Rs.1,16,247/- towards the due arrears outstanding for the H.T.A/c.No.1034 M/s.Gangetic Steel Rolling Mills (Private) Limited situated at Arapakkam which was owned by you.
>
> The outstanding amount has not been paid till to date and hence a sum of Rs.1,16,247/- will be included in your Bills of L.T. Account in the name of M/s.Gangetic Commercial India, K.20, Ambattur Industrial Estate in the 8/97 CC Bill. I request that the above arrears amount along with regular CC Bills paid within the due date without fail."

Aggrieved by the said proceedings of the authority demanding the abovesaid sum, which was admittedly not liable to be paid by the petitioner, but by the private limited company, namely M/s.Gangetic Steel Rolling Mills Private Limited, the writ petitioner has come before this Court.

3. The writ petition was admitted on 2.9.1997 and the order impugned was stayed by this Court. Subsequently, vacate stay petition was filed and on 17.3.1999, this Court made the interim order of stay absolute with condition.

4. It is the contention of the learned counsel for the petitioner that the respondents have no jurisdiction to make the demand for payment of the abovesaid sum, which is admittedly not payable by the petitioner. In any event, by no stretch of imagination, the amount due and payable by M/s.Gangetic Steel Rolling Mills Private Limited be clubbed on the petitioner-Company. Learned counsel would rely upon Clause 19.18 of the Terms

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and Conditions of Supply of Electricity of Tamil Nadu Electricity Board, which reads as follows:

> "19.18: Where any consumer having more than one service connection, defaults in payment of dues relating to any one of the service connections, the Board may cause other service connections in the name of the consumer to be disconnected till all the arrears due for all the service connections are paid, notwithstanding the fact that the service connections are covered by separate agreement."

Further, the definition of "consumer" as set out in Clause 2.01 (iii)(a) of the said Terms and Conditions reads as follows:

> "Consumer" means any person who is supplied with electrical energy by the Board and includes any person whose installation is for time being connected for the purpose of receiving electrical energy with the lines/equipments of the Board and also includes an intending consumer or a consumer whose service connection has been disconnected; "

5. A conjoint reading of the abovesaid provisions of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board, clearly reveals that the petitioner and the said private limited company are two different consumers and therefore, the demand itself is not sustainable in law.

6. In this regard, learned counsel for the petitioner would rely upon a Division Bench judgment of the Andhra Pradesh High Court reported in AIR 1980 Andhra Pradesh 12 (T.Chenchiah vs. A.P.E.Board), which was followed by a learned single Judge of our High Court in the judgment reported in 1998 (I) C.T.C. 586 (Munirathinam Naidu vs. Chengalpattu Electricity System). Learned counsel would refer to the relevant portion in paragraph 6 of the said judgment of the Andhra Pradesh High Court, which reads as follows:

> " 6. .... Even though he was a partner of the firm, the consumer was the firm and not the petitioner. The petitioner was consumer only in respect of his personal and private service connection. Simply because he was a partner of the firm, which was a consumer in relation to the other service, he cannot be called consumer in respect of the service standing in the name of the firm. It is well established that the firm constitutes a legal person and in fact it was the firm that entered into the service

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> contract with the Board. The Board recognised the firm as the consumer, and not any individual partner or the managing partner. The petitioner as the managing partner entered into the contract on behalf of the firm. He merely represented the firm in entering into the contract. By no stretch of imagination could he be called the firm itself. That does not detract from his legal liability to pay the dues of the firm, but he does not become the firm itself. When he is not the firm, he cannot be considered the consumer in respect of the connection which the firm had. Consequently, when the firm committed default and fell into arrears, to recover them, the Board cannot disconnect the private and personal service connection of the petitioner."

7. Learned counsel for the petitioner also brought to the attention of this Court that the counter affidavit has clearly stated that revenue recovery notice was issued to the Pvt. Limited Company and action was taken on 10.10.1991 and thereafter, no follow-up action had been taken against the said private limited company. However, after a lapse of six years, the respondents have sought for payment of the said amount from a different consumer, namely the petitioner herein. It is also contended that the impugned order proceeds on the basis that the default is in respect of the private limited company which is alleged to be owned by the petitioner. Learned counsel would also submit that there was no relationship whatsoever between the petitioner and the private limited company which is in default and the averments made in the writ petition have not been denied by the respondents. Therefore, he contended that the writ petitioner is no away connected with the affairs of the Company, namely M/s.Gangetic Steel Rolling Mills Private Limited.

8. Learned counsel for the respondents would submit two agreement forms, one by M/s.Gangetic Commercials (India) and the other by M/s.Gangetic Steel Rolling Mills (P) Limited, that one Pradeep Gupta signed as partner in the petitioner-company, namely M/s.Gangetic Commercials (India) and as Director in the private limited company, namely M/s.Gangetic Steel Rolling Mills (P) Ltd., and therefore, there was every reason for the authorities to demand the said amount from the petitioner. Apart from this, there is no other Rule or condition relied upon by the respondents to sustain such demand.

9. On a conjoint reading of the said two provisions of the Terms and Conditions of Supply of the Tamil Nadu Electricity Board, it is clear that the two consumers in both these cases are totally different except for the fact that Pradeep Gupta was the erstwhile partner in the petitioner-company and a Director in the

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defaulting company and that by itself does not make both the companies as one and there cannot be said to be one and the same consumer.

10. This Court finds no hesitation to hold that the demand has been made without application of mind to the fact that there are two totally different consumers altogether and there is no provision under the relevant Act or the Rules to club both the consumers. In any event, having initiated revenue recovery proceedings, it is clear that the respondents have been sleeping over the matter and only to get over the same, they have deliberately issued the impugned order against the petitioner to recover the sum which is not payable by the petitioner. No reason has been given in the impugned order as to how the petitioner is liable for the said sum. The claim of the petitioner is further fortified by the fact that earlier, the amount due was included in the Bill and based on the representation, the same was deleted and for the subsequent period, however, the respondents have included the amount without any justification.

11. The Division Bench decision of the Andhra Pradesh High Court relied on by the learned counsel for the petitioner also would support the case of the petitioner that there are two different consumers in this case and therefore, the liability of the private limited company cannot be mulcted on the petitioner-company which is a different consumer altogether and there is no default whatsoever.

12. In view of the above, the order impugned in the writ petition is quashed. The writ petition is allowed. No costs. It is open for the respondents to take appropriate action to recover the amount from the defaulting consumer, namely M/s.Gangetic Steel Rolling Mills Private Limited, Arapakkam Village, North Arcot District (Vellore), in accordance with law.

22.3.2006

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Tamil Nadu Electricity Board
by its Chairman,
800, Anna Salai, Chennai-600 002.

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3. The Junior Engineer,
Tamilnadu Electricity Board,
Industrial Estate South,
MEDC/WEST,
Ambattur, Chennai-600 058.

1 cc to Mr.G.K.Selvarajan, Advocate, SR.4453

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